

## 1 IN THE UNITED STATES DISTRICT COURT

## 2 MIDDLE DISTRICT OF NORTH CAROLINA

3 UNITED STATES OF AMERICA )  
4 ) Case No. 1:11CR203-1  
5 vs. ) Greensboro, North Carolina  
6 THOMAS MARSHALL BYRD, )  
7 ) September 11, 2012  
8 )  
9 ) 2:00 p.m.

## 10 TRANSCRIPT OF SENTENCE

11 BEFORE THE HONORABLE WILLIAM L. OSTEEEN, JR.

12 UNITED STATES DISTRICT JUDGE

## 13 APPEARANCES:

14 For the Government: RANDALL GALYON, AUSA  
15 Office of the U.S. Attorney  
251 N. Main Street, Suite 726  
Winston-Salem, North Carolina 27101

16  
17 For the Defendant: TERESA DAWN STEWART, ESQUIRE  
18 Law Office of Teresa Stewart  
868 W. Fourth St.  
Winston-Salem, NC 27101

19  
20 Court Reporter: Joseph B. Armstrong, RMR, FCRR  
21 W. Market, Room 101  
Greensboro, NC 27401

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23  
24 Proceedings reported by stenotype reporter.  
25 Transcript produced by Computer-Aided Transcription.

1 Greensboro, North Carolina

2 September 11, 2012

3 (At 2:00 p.m., proceedings commenced.)

4 THE COURT: Good afternoon, Mr. Galyon.

5 MR. GALYON: Good afternoon, Your Honor.

6 THE COURT: You may proceed.

7 MR. GALYON: The first matter for the Court this  
8 afternoon is going to be United States of America versus  
9 Thomas Marshall Byrd. It's 1:11CR203-1. Your Honor, he's  
10 represented by Teresa Stewart. The matter is on for  
11 imposition of sentence.

12 THE COURT: All right. Somebody needs to explain  
13 to me what's going on with drug quantity in this case.

14 MS. STEWART: Your Honor, if I may, we would make  
15 a motion to withdraw the objection that was filed and the  
16 motion for leave to file objections. In speaking to  
17 Mr. Byrd, we would ask to withdraw that at this point, and  
18 we're ready to proceed with sentencing.

19 THE COURT: As to what quantity?

20 MS. STEWART: At the 280, Your Honor.

21 THE COURT: Mr. Galyon -- so everybody is in  
22 agreement that instead of 5 kilos it's 280?

23 MR. GALYON: Yes, Your Honor.

24 THE COURT: Let me see counsel up here at the  
25 bench.

1 (Bench conference as follows:)

2 THE COURT: I don't want to ask this in front of  
3 the client, but how did this happen, 5 kilos to 280?

4 MR. GALYON: I think the issue was that it was 5  
5 kilos -- it should've been the 280 to trigger the 10-year on  
6 the crack cocaine, and it was 5 kilos related to cocaine  
7 hydrochloride, but it still had the cocaine base. I think  
8 that's where that came into play, so it was -- all along it  
9 was charged as a (b)(1)(A) offense.

10 THE COURT: It's a big typo, though, and it's one  
11 I go through with the defendant individually on, and that  
12 really should have been caught at some point.

13 MR. GALYON: True.

14 THE COURT: And I think we're revising it in favor  
15 of the defendant, so --

16 MR. GALYON: Right.

17 THE COURT: -- I'm not going to require that it be  
18 in writing, but I am going to go back because I understand  
19 typos, but this -- that's a big one.

20 MR. GALYON: Sure.

21 MS. STEWART: I understand, Your Honor.

22 THE COURT: All right. Well, I'll go through it  
23 again.

24 MS. STEWART: Thank you, Your Honor.

25 (Bench conference concluded.)

1           THE COURT: All right. So the objection is  
2 withdrawn then. Have you reviewed the presentence report  
3 with Mr. Byrd?

4           MS. STEWART: Yes, Your Honor.

5           THE COURT: And are there any objections --  
6 remaining objections?

7           MS. STEWART: No, Your Honor.

8           THE COURT: Mr. Byrd, let me ask you. First of  
9 all, have you reviewed the presentence report with  
10 Ms. Stewart?

11          THE DEFENDANT: Yes, sir.

12          THE COURT: And do you generally agree with the  
13 report?

14          THE DEFENDANT: Yes, sir.

15          THE COURT: All right. Now, Mr. Byrd, let me --  
16 things have changed a little bit. I want to go back and ask  
17 you a couple of questions about this revised stipulation as  
18 it exists. Ms. Stewart, if you'll grab a Bible there.

19          MS. STEWART: Yes, Your Honor.

20          THE COURT: And, Mr. Byrd, I'm going to ask that  
21 Ms. Solomon place you under oath at this time.

22                (Defendant sworn by the clerk.)

23          THE COURT: Mr. Byrd, you're now under oath, and  
24 because you're under oath, if you answer any of my questions  
25 falsely, your answers may later be used against you in a

1 subsequent prosecution for perjury or making a false  
2 statement. Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: Would you state your full name,  
5 please.

6 THE DEFENDANT: Thomas Marshall Byrd.

7 THE COURT: And have you been treated recently for  
8 any mental illness or addiction to narcotic drugs?

9 THE DEFENDANT: No, sir.

10 THE COURT: Are you currently under the influence  
11 of any drug, medication, or alcoholic beverage of any kind?

12 THE DEFENDANT: No, sir.

13 THE COURT: And are you able to hear me and  
14 understand this proceeding today?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Mr. Byrd, you may recall at the time I  
17 originally took your plea agreement in the Rule 11 hearing  
18 held in this court, I placed you under oath and asked you a  
19 series of questions. At that time your plea -- we discussed  
20 the fact that your plea agreement contained a provision in  
21 which you stipulated to a relevant drug quantity of  
22 5 kilograms or more of a mixture and substance containing a  
23 detectable amount of cocaine base, or crack. Do you  
24 remember that?

25 THE DEFENDANT: Yeah.

1           THE COURT: All right. Now, I've been since  
2 informed that that quantity was a mistake in quantity, and  
3 the actual quantity of crack cocaine that the Government  
4 would have requested that you stipulate to and is now --  
5 both the Government and your lawyer have advised me that  
6 you're stipulating to is a quantity of 280 grams or more of  
7 a mixture and substance containing a detectable amount of  
8 cocaine base, or crack, that is, a lower quantity. Instead  
9 of 5 kilograms, its 280 kilograms [sic]. Do you understand  
10 that?

11           THE DEFENDANT: Yes.

12           THE COURT: That is a revision to your plea  
13 agreement. Now, it's a revision to your plea agreement very  
14 much in your favor because it lowers that quantity  
15 substantially. Do you understand that?

16           THE DEFENDANT: Yes, sir.

17           THE COURT: And if I accept this revised quantity,  
18 that is, the 280 grams of a mixture and substance containing  
19 a detectable amount of crack -- cocaine base, or crack, then  
20 in that case I will apply the same rules that I advised you  
21 of earlier. If I accept this stipulation, then I will not  
22 permit you or your attorney to argue that the substance  
23 involved in the offense charged in this case is anything  
24 other than crack -- or I should say with respect to that one  
25 prong of the offense is anything other than crack or that

1 it's a substance less than 280 grams of cocaine base, or  
2 crack. Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you want me to accept the  
5 modification to your plea agreement with this revised  
6 stipulation?

7 THE DEFENDANT: Yes.

8 THE COURT: All right. Then I will find -- yeah,  
9 it's certainly in Mr. Byrd's favor, substantially in his  
10 favor, to amend his plea agreement in that fashion. But I  
11 will find that Mr. Byrd's stipulation is knowingly and  
12 voluntarily entered into, particularly considered in light  
13 of the original stipulation and the favorable nature of the  
14 revision, so I will accept that stipulation.

15 Let's see. I've forgotten where I was. I think,  
16 Mr. Byrd, you indicated you had reviewed the presentence  
17 report with Ms. Stewart?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: You generally agree with the report  
20 now?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. You may have a seat now,  
23 Mr. Byrd. Then I will adopt the presentence investigation  
24 report without change. In Mr. Byrd's case, both Count One  
25 and Count Five carry mandatory minimum terms of

1 imprisonment. The resulting advisory guideline calculation  
2 is as follows:

3 A total offense level of 34.

4 A criminal history category of six.

5 A guideline imprisonment range of 322 to 387  
6 months. That's by operation of the two offenses together.

7 A supervised release range of five years to life  
8 as to Count One and two years to five years as to  
9 Count Five.

10 A fine range of \$17,500 to \$10 million.

11 And a special assessment of \$100 is mandatory.

12 Ms. Stewart, will there be any additional evidence  
13 on behalf of Mr. Byrd in this case?

14 MS. STEWART: No additional evidence, Your Honor.

15 THE COURT: Then I will hear from you at this  
16 time. Have a seat for just a minute. Let me catch up.  
17 Since the stipulation has been withdrawn, I need to amend a  
18 couple of things. I mean amended.

19 (Short pause.)

20 THE COURT: All right. Ms. Stewart, I will hear  
21 from you at this time as to what constitutes a sentence that  
22 is sufficient but not greater than necessary taking into  
23 consideration the advisory guideline calculation as well as  
24 all other factors set forth under 18 USC Section 3553.

25 MS. STEWART: Thank you, Your Honor. What we're



1 requesting the Court to consider is a sentence in the low  
2 end of the recommended -- or the guidelines and recommended  
3 range as it's stated in the presentencing investigation.  
4 We'll tell the Court that that does seem to meet all of the  
5 requirements.

6           In speaking to Mr. Byrd, in addition to what is  
7 listed already in the report before the Court, is that  
8 Mr. Byrd does have two children. Although that's listed,  
9 just to elaborate a little bit on that, his biggest concern  
10 when he was discussing things with me is twofold. One, the  
11 gun; and, two, his children.

12           As to the gun, just briefly, Your Honor, although  
13 it is attributed to him and he does take full  
14 responsibility, initially that gun does belong to someone  
15 else. However, he does accept responsibility, and he does  
16 understand that due to statements that are attributed to  
17 him, and he just wanted to make the Court aware of that  
18 briefly.

19           As to the concerns for his family, he's asking the  
20 Court to consider that he did try to find gainful employment  
21 and while he is in custody will avail himself of every  
22 possible program both to get an education -- as you see, he  
23 only had through the 8th grade -- and in addition to try to  
24 get employment so that when he is released out of this time  
25 frame, he can come out with something behind him that can

1 help him in the future.

2           And he's concerned that when he gets out, his  
3 children will both be adults. That weighs heavily on him,  
4 Your Honor, and he's never had that long of a sentence  
5 before. He's never had anything that really took him away  
6 from his children, and his concern is what's going to happen  
7 to them, and that in a long way goes towards rehabilitation  
8 for him because that's something for him to keep in his mind  
9 from here on out. It's not just what the court system can  
10 do to him, it's what he thinks about everyday as to what  
11 he's done with his family being taken away from him.

12           Your Honor, I would ask the Court to hear from  
13 Mr. Byrd. He did have some concerns that he wanted to raise  
14 to the Court. But before that, I would once again ask for  
15 the low end, and we're asking the Court to consider  
16 recommending any programs that are available for him in  
17 custody both through drug, behavioral, and educational.

18           Also he's asking if he could be recommended to be  
19 sentenced as close to Forsyth County, North Carolina, as  
20 possible as that's where the majority of his family lives.  
21 It's where his sisters are, it's where his children are  
22 located, and his mother who he did not have a close  
23 relationship with, but he's working on that now. That's  
24 also where she's located, Your Honor.

25           THE COURT: All right. Thank you, Ms. Stewart.

1 Mr. Byrd, let me hear from Mr. Galyon, and then I'll hear  
2 from you. Mr. Galyon, anything?

3 MR. GALYON: Your Honor, just agree with the low  
4 end sentence.

5 THE COURT: All right. Mr. Byrd, let me say  
6 you're represented by counsel, so you're not required to say  
7 anything. If you choose to remain silent, your silence will  
8 not be held against you in any way whatsoever, but you do  
9 have the right to address the Court before any sentence is  
10 imposed; and if you wish to address the Court, now is the  
11 appropriate time.

12 THE DEFENDANT: Yes.

13 THE COURT: All right.

14 THE DEFENDANT: I just want to say I'm sorry for  
15 my actions, and I take full responsibility for my actions.  
16 And I just want a second chance in life and a second chance  
17 to raise my son, so he won't make the same mistake I made.  
18 That's all.

19 THE COURT: All right. Well, in Mr. Byrd's case,  
20 this is a -- obviously a substantial sentence driven  
21 primarily by Mr. Byrd's status as a career offender in this  
22 case. After taking into consideration the advisory  
23 guideline calculation as well as all other factors set forth  
24 under 18 USC Section 3553, I find that a sentence at the low  
25 end of the guidelines, that is, 262 months as to Count One

1 and 60 months as to Count Five, particularly taking into  
2 consideration those sentences will run consecutively to each  
3 other, is sufficient but not greater than necessary in  
4 Mr. Byrd's case.

5 Looking at the nature and circumstances of the  
6 offense, certainly those factors are serious in that it does  
7 appear that Mr. Byrd was both cooking and selling -- cooking  
8 and selling crack as well as powder and armed at the time as  
9 well. I do not see verifiable employment.

10 And in looking at Mr. Byrd's history, we see a  
11 substantial and repeated history of the sale of cocaine --  
12 or sale of controlled substances and prosecution for those  
13 offenses. Those prior sentences, although substantially  
14 shorter than this sentence, were simply insufficient to  
15 deter Mr. Byrd from further criminal conduct, and,  
16 therefore, the need to protect the public and to afford  
17 adequate deterrence is substantial, but a sentence at the  
18 low end of the guideline range is sufficient.

19 So I will impose that sentence, Ms. Stewart. The  
20 supervised release will be on the terms and conditions set  
21 forth in the presentence report. Is there anything further  
22 you wish to address before I impose that sentence?

23 MS. STEWART: Not regarding sentence, Your Honor.

24 THE COURT: All right. Then in  
25 Case No. 1:11CR203-1, United States of America versus Thomas

1 Marshall Byrd, as to Count One, it is hereby ordered that  
2 the defendant is committed to the custody of the Bureau of  
3 Prisons for a period -- for a term of 262 months followed by  
4 five years of supervised release. A special assessment of  
5 \$100 is mandatory, is hereby imposed, and is due and payable  
6 immediately. A fine is waived because of the defendant's  
7 inability to pay, and restitution is not imposed in  
8 Mr. Byrd's case.

9 I do recommend to the Bureau of Prisons that the  
10 defendant be designated to a facility as close to his home  
11 as possible; to a facility where he may participate in an  
12 intensive substance abuse treatment program; in the inmate  
13 financial responsibility program; and finally that the  
14 defendant be designated to a facility where he may  
15 participate in such educational opportunities as may be  
16 reasonably available through the Bureau of Prisons.

17 As to Count Five, the defendant is committed to  
18 the custody of the Bureau of Prisons for a term of 60  
19 months. That sentence is imposed to run consecutively to  
20 the sentence imposed as to Count One followed by five years  
21 of supervised release which shall run concurrently. A \$100  
22 special assessment is mandatory, is hereby imposed, and is  
23 due and payable immediately as to Count Five for a total of  
24 \$200 in special assessments.

25 During the period of supervised release, it is

1 ordered that the defendant shall comply with the standard  
2 terms and conditions of supervised release. In addition to  
3 the standard terms and conditions, the following special  
4 conditions are imposed:

5           One, the defendant shall provide any requested  
6 financial information to the probation officer.

7           Two, the defendant shall submit his person,  
8 residence, office, vehicle, or any property under his  
9 control to a warrantless search. Such a search shall be  
10 conducted by a United States Probation officer at a  
11 reasonable time and in a reasonable manner based upon  
12 reasonable suspicion of contraband or evidence of a  
13 violation of a condition of release. Failure to submit to  
14 such a search may be grounds for revocation. The defendant  
15 shall warn any residents that his premises may be subject to  
16 such searches.

17           Three, the defendant shall submit to substance  
18 abuse testing at any time as directed by the probation  
19 officer. The defendant shall cooperatively participate in a  
20 substance abuse treatment program which may include drug  
21 testing and inpatient or residential treatment and pay for  
22 those treatment services as directed by the probation  
23 officer. During the course of any treatment, the defendant  
24 shall abstain from the use of any alcoholic beverages.

25           Mr. Byrd, you do have the right to appeal the

1 sentence that I have imposed in this case. If you choose to  
2 appeal, notice of appeal must be filed within 14 days of  
3 entry of judgment. If you wish to appeal and cannot afford  
4 the services of counsel, counsel will be appointed to  
5 represent you. Ms. Stewart will be responsible for advising  
6 you with respect to your right to appeal and filing a notice  
7 of appeal if you instruct her to do so.

8 Anything further, Ms. Stewart?

9 MS. STEWART: Your Honor, a motion to dismiss as  
10 to the remaining Counts Three, Four, Six, and Count Two,  
11 Object Two.

12 THE COURT: I will order the dismissal of any  
13 remaining counts pursuant to the terms of the plea agreement  
14 in Mr. Byrd's case.

15 Let me revise that, Mr. Byrd. You do have an  
16 appeal waiver in your case which limits to a substantial  
17 degree the issues that you have reserved the right to  
18 appeal, but Ms. Stewart will go over that with you at the  
19 appropriate time.

20 Anything further, Mr. Galyon?

21 MR. GALYON: Your Honor, just ask for a  
22 destruction order related to the firearms and also the drugs  
23 in the case.

24 THE COURT: I'll order any controlled substances  
25 seized at the conclusion of any applicable -- destroyed at

1 the conclusion of any applicable appeals period. The  
2 firearms seized are to be returned to a lawful, rightful  
3 owner if one can be located; and, if not, they are to be  
4 destroyed at the conclusion of the appeals period.

5 MS. STEWART: Thank you, Your Honor.

6 THE COURT: Good luck to you, Mr. Byrd.

7 (At 2:19 p.m., proceedings concluded.)  
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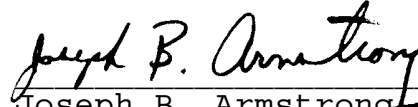
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C E R T I F I C A T E

I, JOSEPH B. ARMSTRONG, RMR, FCRR, United States  
District Court Reporter for the Middle District of North  
Carolina, DO HEREBY CERTIFY:

That the foregoing is a true and correct transcript of  
the proceedings had in the within-entitled action; that I  
reported the same in stenotype to the best of my ability;  
and thereafter reduced same to typewriting through the use  
of Computer-Aided Transcription.

Date: 01/02/13

  
\_\_\_\_\_  
Joseph B. Armstrong, RMR, FCRR  
United States Court Reporter  
324 W. Market Street  
Greensboro, NC 27401